

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-12125-RWZ

ANTHONY IVERY

v.

UNITED STATES OF AMERICA

ORDER

November 30, 2004

ZOBEL, D.J.

Petitioner, in May 2001, pled guilty to two counts of possession with intent to distribute cocaine base. The Sentencing Guidelines dictated a sentence of 77 to 96 months' imprisonment given a total of 4.1 grams of cocaine base and Mr. Ivery's criminal record, which put him into criminal history category VI. He was in fact sentenced to the minimum 77 months. He now seeks to set aside the sentence and judgment on the ground that the Sentencing Commission retroactively changed the guideline calculation pertaining to various drugs containing oxycodone in response to "proportionality issues in the sentencing of oxycodone trafficking offenses." Although petitioner is correct that the same proportionality issues exist with respect to cocaine, cocaine base offenses, the amendments do not cover cocaine. The relief petitioner seeks is therefore not available.

Accordingly, the petition is dismissed.

DATE

/s/ Rya W. Zobel

RYA W. ZOBEL
UNITED STATES DISTRICT JUDGE